



# Ecology releases new version of shoreline rule for public comment

Ecology has released a new draft of proposed shoreline guidelines that attempts to balance local governments' desire for flexibility with federal fish agencies' need for certainty that fish habitat will be protected.

The public-comment period on the draft rule begins June 7 and closes August 7, 2000. Eight public hearings are scheduled at locations across the state (*see back page*).

## Background

The Shoreline Management Act (SMA) requires local governments to write "shoreline master programs" that regulate streams, lakes over 20 acres, and marine waterfronts. The 247 city and county master programs currently in effect were written based on state guidelines that have not changed since 1972.

Ecology has been working since 1995 to satisfy a Legislative requirement to update these guidelines. After working with a series of advisory committees and producing a number of informal drafts, Ecology formally proposed a rule in April 1999. During a public-comment period that included 9 hearings across the state, more than 2,500 people commented on the draft.

After reviewing the public comments, Ecology determined that substantial changes were needed. Under state law, if an agency decides to make substantial edits to a proposed rule, it must start the official public-comment process from scratch.

Ecology withdrew the rule in October 1999, worked with interested groups on changes, and sought review of a revised "informal" draft rule from December 1999 through February 2000.

## New optional "path"

As Ecology worked to address comments on the April '99 draft, a central dilemma became apparent. Some cities and counties said they wanted *more* flexibility in how they meet protection standards required by the state's Shoreline Management Act. Still others wanted guidelines written so that master programs based on them would insulate local governments from liability under the federal

Endangered Species Act (ESA) for threatened and endangered fish.

However, the National Marine Fisheries Service and the U.S. Fish & Wildlife Service ("the Services") that implement the ESA were concerned that *too much* flexibility could leave shoreline habitat inadequately protected and could further harm depressed fish stocks. Guidelines that were too flexible, they warned, would not qualify for the up-front protection from ESA liability that many local governments sought.

Ecology's current proposed rule attempts to resolve the problem by establishing two options for cities and counties.

"Path A" would allow flexibility and creativity in how local governments meet the standards of the SMA. This path could be used for shorelines that are not habitat for listed fish species and by those jurisdictions that want to negotiate ESA issues directly with the Services.

By contrast, "Path B" would be more specific, setting forth standards the Services are confident will adequately protect listed species of salmon, steelhead and trout and their habitat.

The two agencies have submitted letters to Ecology indicating that Path B meets the standard needed for a local government to get an exception from liability under the ESA. If an ESA-listed fish is harmed or its habitat disturbed as the result of a shoreline development covered by an exception, it would not be considered "take," and thus would not be subject to ESA liability.

Without such an exception, new shoreline activities could be subject to federal enforcement or citizen lawsuits brought against landowners and developers.

## Protecting ecological functions

At the heart of both paths of the proposed rule is a requirement that local officials identify the "ecological functions" performed by shorelines and protect them (and restore them over time) based on what the local environment needs.

The proposed Path A would allow local governments to comply with this requirement through a variety of means. For example, a local government might analyze a stream to determine key stretches where riverbanks absorb floodwaters and prevent



*Ecology's proposed shoreline guidelines require local governments to inventory shorelines and establish measures to protect and restore ecological functions.*

flood damage downstream. They could then use buffer requirements or wetlands protection provisions to prevent inappropriate development in those areas.

The Path B rule is more detailed in its requirements for protecting ecological functions. It requires local governments to protect and restore “properly functioning conditions” for listed fish populations.

The Path B approach is also more specific in how local governments protect these functions. For example, Path A does not have a default vegetative buffer width, whereas Path B does (*see below*).

## Protecting shoreline vegetation

Both paths in the current draft rule would require local governments to protect shoreline plants that keep banks from eroding, shade the water, and create habitat for fish. Path A allows local governments to use a variety of means, such as clearing and grading standards or setback and buffer standards, to protect vegetation.

The Path B approach sets a default vegetation buffer of one “site-potential tree height” (the maximum height that a tree potentially could grow at a particular site) along rivers where trees naturally grow, 60 feet along rivers where trees don’t grow. The rule also sets a buffer of one-half “site-potential tree height,” or 100 feet (whichever is greater) along lakes and marine shorelines. These standards are based on studies that document the contribution that vegetation makes to shoreline functions.

## Bulkhead provisions

Under the proposed guidelines, local master programs would need to take stricter measures to slow the spread of bulkheads and other “hard” shoreline armoring.

Scientists have found that these structures degrade fish and wildlife habitat and can accelerate erosion on neighboring properties.



*Proposed shoreline guidelines require local governments to protect shoreline vegetation.*

Both paths in the proposed rule would require that applicants demonstrate a need for *new* bulkheads and other shoreline armoring before getting approval. The rule also requires that fish-friendly erosion-control methods be used as a first priority.

The new draft clarifies that repairing and maintaining existing bulkheads is allowed under either path. However, both paths do set new requirements for *replacing* bulkheads. Path B requires a geotechnical report showing the bulkhead needs to be replaced before getting approval.

## Docks and piers

Both paths would require that docks and piers be built to reduce harm to the shoreline environment. Also, piers and docks must be restricted to the minimum size needed for the proposed use, and property owners are encouraged to share piers and docks among several neighbors to reduce the spread of individual structures.

Ecology removed a controversial requirement in the 1999 proposal that would have required owners of single-family residences to demonstrate that a nearby dock was unavailable before getting permission to build a new pier or dock.

## Agricultural lands

Regarding Ecology’s 1999 draft rule, farmers wanted language stating that the guidelines will not apply retroactively to existing and ongoing agricultural activities. Such language has been added to both paths. Both paths would require that local governments develop standards to prevent harm to shorelines from *new* agricultural uses. This requirement would not apply to changes from one crop to another.

## Improving local inventories

A key step in protecting ecological functions is conducting an inventory of shoreline conditions. Most local governments



*Under proposed shoreline rules, new developments would have to be set back sufficiently to ensure bulkheads aren’t needed to protect the structure.*

conducted inventories of their shorelines in the mid-1970s, when they adopted their first master programs. Most of those inventories have never been updated.

Both paths of the draft rule describe new minimum requirements for baseline inventory and analysis. Ecology’s 1999 proposal drew fire from local officials who believed the inventories would require costly original research. Path A requires local governments to use existing information such as critical area inventories as a basis for analysis. Path B sets more-detailed inventory requirements, but promises that Ecology will help coordinate the work.

## Environment designations

The proposed guidelines give local governments new directions for setting environment designations.

These designations are similar to zoning overlays for shoreline areas. Designations such as “natural,” “rural-conservancy,” or “high-intensity” are applied to shorelines based on land-use patterns and the character of the natural resources. Each designation has its own management policies and regulations.

The proposed designations in both paths are more expansive than the original 1972 guidelines, with more-detailed requirements. For example, under the proposed rule, many undeveloped shorelines will fall into either “natural” or “rural-conservancy” classifications that emphasize preserving existing ecological functions. Urban shorelines will typically emphasize avoiding further degradation while focusing on restoring natural functions.

If a local government’s existing environment designations are consistent with the intent of the new guidelines, they need not be changed.



## Preferred use requirements

One of the central policies of Washington's Shoreline Management Act is that shorelines should be reserved for uses that truly depend on a waterfront location, or uses that provide opportunities for the public to enjoy the shoreline. The draft guidelines are more explicit than current rules in how to set priorities for these preferred uses. The rule defines three distinct kinds of uses, giving priority to "water dependent" uses over "water related" and "water enjoyment" uses.

## Integration with growth management plans

One of the main goals of the proposed rule is to make it easier for local governments to integrate shoreline programs with local Growth Management plans and regulations. A state law passed in 1995 (*ESHB 1724*) mandated that local shoreline programs be considered part of local plans.

The proposed rule would give local governments flexibility in how they incorporate shoreline policies and regulations into comprehensive plans and development regulations.

For example, the guidelines discuss various methods for including shoreline policies within local comprehensive plans and methods to avoid duplication between the shoreline master program and the local

critical-areas ordinance.

The guidelines make it clear that a local government's administrative provisions need not be a part of the master program. This lets local governments change their permit-review procedures without necessarily amending their master programs. The guidelines also provide more specific direction regarding shoreline conditional-use-permit provisions.

## Clarifying state interest

The Shoreline Management Act sets out broad policies defining the state interest in shorelines. Ecology must look to these policies when reviewing changes to local shoreline programs. The draft rule gives more explicit guidance to local governments on how to meet the key policies of the Shoreline Act, including policies on public access, water quality, aquaculture, port and industrial development, and reducing flood damage.

This guidance will help local governments resolve conflicts over allowable uses on shorelines.

## Wanted: more time, money

Local governments are very concerned that the Legislature has not appropriated new funds to help them update their local master programs to be consistent with the new state guidelines.

## Draft EIS available for review

Ecology plans to release a programmatic Draft Environmental Impact Statement (DEIS) on the rule for public review in mid-June 2000.

The DEIS is considered "programmatic" because it analyzes the consequences of a proposed rule that would be broadly applied across a wide area. The DEIS describes the likely environmental impacts of the rule on a statewide scale.

To review the document, visit Ecology's Web site at [www.wa.gov/ecology](http://www.wa.gov/ecology) under "Shorelands and Wetlands." If you want a paper copy of the DEIS sent to you, call 1-888-211-3641, or send e-mail to [shorerule@ecy.wa.gov](mailto:shorerule@ecy.wa.gov). The public comment period on the DEIS closes August 7, 2000.

The law requires Ecology to update the guidelines, and it also requires local governments to update their local master programs within two years after that.

"We agree that is an ambitious deadline for local governments to meet, and we are very sympathetic to the financial burden it will place on them," said Ecology Director Tom Fitzsimmons. "That's why the Governor and Ecology have twice supported funds in the budget to pay for local government's costs, and we also supported changing the law to phase in the local master programs over several years instead of having them all come due at once. Ultimately, however, these decisions are up to the state legislature."

Ecology and the Governor will continue to support funding and a time extension in coming legislative sessions.

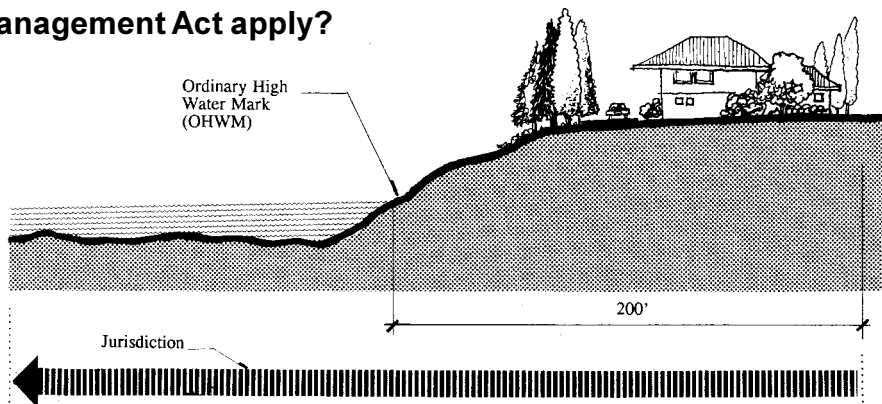
## Public comments

The public-comment period on the draft rule begins June 7 and closes August 7. Ecology is also gathering comments on a draft environmental impact statement (*see above*).

Eight public hearings are scheduled in June and July (*see back page*). The rule will be posted on Ecology's Web site at [www.wa.gov/ecology](http://www.wa.gov/ecology) under "Shorelands and Wetlands." If you want a paper copy of the rule sent to you, call 1-888-211-3641, or send e-mail to [shorerule@ecy.wa.gov](mailto:shorerule@ecy.wa.gov).

Comments on the rule should be sent to: Shoreline Guidelines, Department of Ecology, PO Box 47600, Olympia WA 98504.

## Where does the Shoreline Management Act apply?



The Shoreline Act applies to more than 20,000 miles of shorelines. This includes 2,300 miles of lake shores, 16,000 miles of streams, and 2,400 miles of marine shores.

Shorelines are defined as:

- all marine waters;
- streams with a mean annual flow greater than 20 cubic feet per second;
- lakes 20 acres or larger;

■ Upland areas called "shorelands" 200 feet landward from the edge of these water's;

and the following areas when they are associated with one of the above:

- wetlands and river deltas; and
- some or all of the 100-year floodplain including all wetlands within the entire floodplain.

# Hearings scheduled on draft revisions to shoreline guidelines

Public hearings on proposed amendments to Washington's "shoreline master program guidelines" rule are scheduled for June and July. Each meeting will begin with an informal **open house** discussion at 5:30 p.m.

Formal **hearings** with opportunity to submit testimony start at 7 p.m. Hearings are scheduled for the following locations:

## Pasco, June 27

Columbia Basin Community College, 2600 N. 20<sup>th</sup>, Workforce Training Center, Rm. 180

**Directions:** From Highway 12, take North 20th exit; head north on N. 20<sup>th</sup> toward the airport; head past the CBC campus; turn left on 'Argent'; Workforce Training Center is tan building on left.

## Spokane, June 28

Spokane Intercollegiate Research and Technology Institute (SIRTI), 665 N. Riverpoint Blvd., Rm. 201

**Directions:** From the West, go E. on 90, take Division St exit, turn R. on Trent, go 2 blocks, take 2<sup>nd</sup> left onto Riverpoint Blvd. SIRTI is the tall brick building on Trent and Riverpoint, across from Schade Tower. Park in SIRTI lot or behind the building. From the East, take the Hamilton Exit, go over the overpass, left on Trent, follow directions above.

## Wenatchee, June 29

Chelan County PUD, 327 N. Wenatchee Ave.

**Directions:** From the West, take Highway 2 to state Route 285 south into Wenatchee to 5<sup>th</sup> St (stay in left lane), the PUD will be on your left. From the East, at the junction of Highway 2 and state Route 28 take a right and continue on Hwy 2 W. and Hwy 97 S. After crossing the Columbia R. take state Route 285 S. into Wenatchee, to 5<sup>th</sup> St., (stay in left lane), the PUD will be on your left.

## Olympia, July 5

Ecology Department Auditorium, 300 Desmond Dr.

**Directions:** Take I-5 to Martin Way (Exit 109), turn East onto Martin Way, take first right onto Desmond Drive, proceed up hill, take first left. Visitor parking is on the left.

## Raymond, July 6

Raymond High School Auditorium, 1016 Commercial

**Directions:** From Highway 101, go West onto Commercial to the school.

## Vancouver WA, July 10

Water Resource Education Center, 4600 S.E. Columbia Way

**Directions:** From I-5 (N or S), take the Camas

Highway 14 exit. Within 1/4 mile, take Exit 1 South. Turn east onto Columbia Way; at end of road turn north at traffic circle, drive around fountain to the Center lot.

## Seattle, July 11

Seattle Center, Shaw Room, 305 Harrison St.

**Directions:** From I-5, take Mercer Street/Seattle Center exit. Follow signs to Seattle Center, look for parking garages close to the Center.

## Bellingham, July 12

Whatcom County Courthouse Council Chambers, 311 Grand Ave.

**Directions:** Take I-5 to exit 253, go to stop sign and turn right; at light turn right onto Lakeway; go to 2nd light & turn right-ish onto Holly (Lakeway becomes Holly); pass through 7th light on Commercial Street; turn right onto Prospect St. at next Light; Courthouse is fourth block on right; parking lot is 2.5 blocks on right.

## For more information

For more information about public hearings, call 1-888-211-3641, or visit Ecology's Web site at [www.wa.gov/ecology](http://www.wa.gov/ecology) under "Shorelands and Wetlands." For persons with disabilities, please contact Tim Gates at (360)407-7256, or TDD (360)407-6006 by June 16.



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